91-2033

(1)

No._____

Supreme Court, U.S.
FILED
JUN 2 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

LINDA ALEXANDER ET AL.,
PETITIONERS

v.

H. PARKS HELMS, Administrator of the Estate of JESSIE HOGAN JACKSON,

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

WILLIAM SIMS
280 Humboldt Parkway
Buffalo New York 14214
(716) 881 1322
Counsel of Record

BARBARA M. SIMS
Counsel for the Petitioner
280 Humboldt Parkway
Buffalo, New York 14214
716-881 1322

QUESTIONS PRESENTED

1. Is it a violation of the United States Constitution, Amendment XIV, §1, the equal protection clause, and Article IV, §1, the full faith and credit clause, for a state to deny children, who were born illegitimate, domiciliaries of New York, legitimated according to New York Law after the death of the father, a domicialiary of North Carolina, the right to inherit from his estate, on the ground that in North Carolina, the heirs of a decedent are determined as of the date of the death of the decedent, and these children were not determined to be heirs as of that date, where:

(a) North Carolina G.S. §29-128 provides that a child, born an illegitimate who shall have been legitimated according to North Carolina G.S. 49-10 or 49-12 or in accordance with the laws of any

other jurisdiction may inherit from the estate of the father .....but does not provide that legitimation in any other jurisdiction must have taken place prior to the death of the father?

(b) where illegitimate children must assert their claims to the estate of their father within six months, but there is no statute of limitations imposed upon the assertion of claims by legitimate children?

(c) where the failure to allow children who have been legitimated according to the laws of a sister state prior to the distribution of the estate, without statutorily stating the time in which extraterritorial legitimation must take place would result in the failure to accord the judgment or order of a sister State, full faith and credit?

LIST OF PARTIES

The parties to the proceedings below are H. PARKS HELMS, the Administrator of the Estate of JESSIE HOGAN JACKSON, Deceased, Plaintiff-Appellee, PHYLLIS-YOUNG WOODARD and MARCELLA BAKER, Defendant-Appellees and LINDA ALEXANDER and CAROLINE ALEXANDER, Defendant-Appellants.

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The decision of the North Carolina Supreme Court is contrary to the trend of the decisions by the United States Supreme Court beginning with Levy v. Louisiana 392 U.S. 68 (1968) toward equalizing the status of illegitimate children who have proven their relationship to a father, with the status of legitimate children, and holding that it is a denial of the equal protection of the laws for a state to discriminate on the ground of illegitimacy, without any compelling state interest.

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No._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

LINDA ALEXANDER ET AL.,
PETITIONERS

v.

H. PARKS HELMS, Administrator of the Estate of JESSIE HOGAN JACKSON,

---

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

The Petitioners, Linda and Caroline Alexander, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the North Carolina Court of Appeals entered in the above entitled proceeding on January 6, 1992.

OPINIONS BELOW

The order of the North Carolina Supreme Court dismissing Petitioners' appeal and denying their petition for discretionary review is reported at N.C. and is reprinted in the appendix hereto, p. A-1 infra

The opinion of the North Carolina Court of Appeals is reported at and is reprinted in the appendix hereto at p. A-4 infra.

The Decision, Findings of Fact and Conclusions of Law in the General Court of Justice, Superior Court Division of North Carolina is reprinted at page A-19 of the Appendix.

JURISDICTION

The Petitioners claim that North Carolina Statute 29-18 sets forth the procedure which must be complied with for children, born out of wedlock, who are domiciliaries of other jurisdictions

and have been legitimated according to the laws of the Jurisdictions in which they reside, to inherit from the estate of their father, who died intestate in North Carolina; that they have fully complied with the laws of both jurisdictions, and that for North Carolina to deny them the right to inherit from the estate of their father solely on the ground that they were born illegitimate, and in spite of their legitimation in New York State, when a legitimate children could inherit from the father under the same circumstances, is violative of the United States Constitution, Fourteenth Amendment, the Equal Protection Clause, since it is based upon invidious discrimination against illegitimate children, which the Supreme Court of the United States has steadily disapproved of in a series of decisions, and it also is a violation of United

States Constitution, Article IV, §1, the full Faith and Credit Clause.

On July 10, 1989, H. Parks Helms, the Administrator of the Estate of Jessie Hogan Jackson, who died intestate in Mecklenburg County on August 8, 1988 brought an action for a Declaratory Judgment in the Superior Court of Mecklenburg County to determine the legal heirs to the estate. Two of the claimants, Linda Alexander and Caroline Alexander, were children of the Decedent, born out of wedlock, who were residents of the State of New York. They had been openly and notoriously acknowledged by their deceased father, were supported by him and had proven the paternal relationship to by clear and convincing proof, which was entirely satisfactory as is required by the laws of the State of New York. They were legitimated according to the laws of New York, after the death of their

father, by an Order of the Erie County Family Court entered on February 24, 1989.

The other two claimants are the legitimate daughters of decedent, Phyllis Young-Woodard and Marcella Baker.

On August 10, 1990, the Hon. Shirley L. Fulton, Superior Court Judge of Mecklenburg County, rendered her decision in which she held that although Petitioners had been legitimated according to the laws of their domicile, New York State, that in North Carolina, heirs are determined as of the date of death of the decedent, therefore Petitioners were barred from participating in their father's estate, even though they had been legitimated in accordance with the laws of "any other state". Since legitimation occurred after decedent's death, and the petition to legitimate in New York State was not in progress as of the date of Decedent's death,

Petitioners had not been legally determined to be heirs as of the date of the death of the decedent.

An appeal was timely taken, after which the North Carolina Court of Appeals, on December 17, 1991, affirmed the judgment of the Superior Court of Mecklenburg County.

The Petitioners then filed an appeal and, in the alternative, a petition for discretionary review to the North Carolina Supreme Court. On March 4, 1992, the North Carolina Supreme Court dismissed the appeal and denied the petition for discretionary review.

The jurisdiction of this Court to review the judgment of the North Carolina Court of Appeals is invoked under 28 U.S.C. 1257.

STATEMENT OF THE CASE

Decedent, Jessie Hogan Jackson died intestate on August 8, 1988, a resident of Mecklenburg County, North Carolina, leaving him surviving four daughters. The two Petitioners, are residents of the State of New York, who, though born out of wedlock, had been openly and notoriously acknowledged by him, and had been supported by him. They had been legitimated according to the laws of the State of New York, and had complied with all applicable law of the State of North Carolina to assert their claim as heirs to their father's estate, the assets of which had not been distributed as of the date of this appeal. The two Defendant-Appellees, are the legitimate daughters of the decedent. Letters of Administration were granted to H. Parks Helms, Esq., an Attorney in Charlotte, North Carolina.

The action from which this appeal arises was instituted on July 10, 1989 by the Administrator for a Declaratory Judgment to ascertain the lawful heirs to this estate. The trial Court held that the Petitioners could not inherit from their father's estate because they had not been legitimated prior to the date of his death and heirs are determined as of the date of death. (App. p. 19). The Court of Appeals affirmed that decision after a timely appeal to that Court. The Petitioners then filed an appeal, and in the alternative filed a petition for discretionary review. (App. p. 4).

On March 4, 1992, the North Carolina Supreme court dismissed the appeal and denied the petition for discretionary review. (App. p. 1)

REASONS FOR GRANTING THE WRIT

This case presents the question of whether it is a violation of the United States Constitution, Fourteenth Amendment, Equal Protection clause, and Article IV §1, the Full Faith and Credit Clause, for the State of North Carolina, by the application and interpretation of its laws to hold that the Petitioners, who are domiciliaries of New York, born illegitimate and who, although legitimated by the laws of that state after the death of their father, but prior to the distribution of the assets of the estate, are denied the right to inherit from their father, who died a domiciliary of North Carolina, on the grounds that although N.C.G.S. §29-18 (set forth in the Appendix at page 31) permits children, born illegitimate, who are legitimated according to the applicable laws of any other jurisdiction, to inherit from their

fathers, without providing that legitimation in the other jurisdiction must take place prior to the death of the father, nevertheless the court held that the Petitioners were completely barred from inheriting from his estate, because North Carolina has interpreted N.C.G.S. §29-18. (set out in the appendix at page A-31), as having an "internal" statute of limitations which requires that legitimation take place before the death of the father.

The court further held that in North Carolina, heirs of a decedent are determined as of the date of his death. Since the Petitioners had not been legitimated as of the date of the death of the decedent, they were not his heirs, nor could they inherit from his estate in North Carolina.

In contrast, North Carolina General Statute, §29-9 (A-30), provides that post-

thumous children, "lineal descendants and other relatives of an intestate born within ten lunar months after the death of the intestate, shall inherit as if they had been born in the life time of the intestate and had survived him."

The only time limitation for legitimate children to assert a claim against the estate of a father is prior to the final distribution of the assets of the estate.

In Little v. Streater 452 U.S. 1 (1981), the Court quoted from Boddie v. Connecticut, 401 U.S. 379 (1971), stating that "a statute . . may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." . .

It is not doubted that the State

of North Carolina has an interest in the orderly disposition of a decedent's property at death, however, it is not explained how and to what extent the interest of the state is protected by the interpretation of this statute to deny these children the right to inherit from their father's estate.

In Hayes v. Dixon, 83 N. C. App. 52, 348 S.E. 2d 609 (1986) disc. rev. denied, 484 U.S. 824, 98 L. Ed. 2d 50, 108 S.Ct. 88 (1987), the Supreme Court of North Carolina had denied the right of an openly acknowledged illegitimate child to inherit from the estate of the father. There, the court held that the denial of the right was based upon the fact that the illegitimate child had not been legitimated in North Carolina or in New York. It gave no clue that legitimation according to the the applicable laws of any other jurisdiction

had to take place prior to the death of the decedent. In this case, the Petitioners have not only been legitimated, they filed a timely claim within the six month period as is provided by N.C.G.S. 29-19 (b). (App. 32).

The decision of the court below maintains that the denial of the right of the illegitimate children to inherit from their fathers does not violate the Equal Protection clause, citing Mitchell v. Freuler, 297 N.C.206, 215, 254 S.E.2d 762, 767 (1979), also stating that their highest court held that the statutes are substantially related to the lawful State interest they are intended to promote.

This court has frowned upon distinctions based upon illegitimacy in a series of decisions one of the most quoted of which is Trimble v. Gordon, 430 U.S. 762 (1977), in which it was held that the Illinois legitimacy distinction

for intestate succession violated the equal protection clause of the Fourteenth Amendment, since the distinction could not be justified on the basis of the state's interest in promoting legitimate family relationships or the state's interest in establishing a method of property disposition through which proof of a lineal relationship was more readily ascertainable.

North Carolina statute 29-19 (b) provides that claims of illegitimate children who have been legitimated in accordance with North Carolina law, must give notice of the basis of the claim to the personal representative of the putative father within six months of the first publication or posting of the general notice to creditors.

In these proceedings the Petitioners are the illegitimate children of the intestate who had been legitimated

according to the laws of New York, after the death of the testator, but prior to the distribution of the assets of the estate. They presented proof of their legitimation by offering into evidence the exemplified copies of the New York State orders of legitimation which had been entered six months after the death of the decedent in August, 1988, although the proceedings for legitimation had been commenced in the Family Court of New York State, within 3 months, or February, 1989.

All Parties in North Carolina were served with notice of the proceedings, but did not appear. There was an appearance by the Administrator of the estate at the deposition, taken in North Carolina of witnesses who had knowledge of the relationship between the Petitioners and their father and his open and notorious acknowledgement of them when they visited

their father in North Carolina during summers and holidays. The Court below held that because North Carolina determines the rights of inheritance at the date of death, Petitioners were not permitted to inherit from the estate of their father, and that only the legitimate children, Phyllis Young Woodard and Marcella Baker, were the lawful heirs.

The North Carolina Court of Appeals, affirming the decision of the North Carolina Superior Court held that the Petitioners could not participate in the estate of their father on the ground that estates vest on the date of the death of the decedent, and since the Petitioners were not legitimated on that date, nor was their legitimation in process, they were not heirs of their father. The Court then held that North Carolina's intestate succession laws require that all legitimation actions, both foreign and

domestic, be reduced to judgment prior to the death of the putative father.

The Petitioners claim that placing an interpretation on the statutes of North Carolina which would require them to have finalized their legitimation prior to the date of the death of the intestate, in order to inherit from him, when the laws of the state permit legitimate children to assert a claim to inherit from the estates of their father at any time before the assets of the estate are distributed, is invidious discrimination against them on the grounds of their illegitimacy.

In Trimble v. Gordon, 430 U.S. 762, 52 L. Ed. 2d 31, 97 S. Ct. 1459 (1977), the Court referred to the decision in Labine v. Vincent, 410 U.S. 532 (1971), which decision has been limited in force as a precedent. (Id. p. 766 n. 12 [5b, 6b]). The Petitioners have been

legitimated so that their biological relationship to their father has been judicially established. To claim that the denial of the right to inherit from their father is based upon a consideration other than penalizing them for being born illegitimate, cannot be legally substantiated or justified. In Weber v. American Casualty & Surety Company, 406 U.S. 164 (1972), this court pointed out the tests to determine the validity of state statutes under the equal protection clause of the Fourteenth Amendment requires at a minimum that a statutory classification bear some rational relationship to a legitimate state purpose, and that the essential inquiry in all cases involving the creation of statutory classifications approaching sensitive and fundamental personal rights in state economic and social legislation is a dual one: What legitimate state interest

does the classification promote? What fundamental personal rights might the classification endanger? The Court observed that imposing disabilities on the illegitimate child is contrary to the basic concept that the legal burdens should bear some relationship to individual responsibility or wrongdoing.

In Trimble (supra), the Court quoted Mathews v. Lucas, 427 U.S. 495, (1976), in determining the scrutiny to which a classification is subject when used as the basis of a statutory classification. It reiterated the levels of scrutiny which are applied in determining whether the Equal Protection Clause is violated. The Court set forth which statutory classification is appropriate in considering statutory classifications based upon illegitimacy, stating that that status is analagous in many respects to the immutable personal characteristics

that have been held to be suspect when used as the basis of statutory differentiations.

This Court, in Clark v. Jeter, 486 U.S. 456 (1988), again addressed the question of statutory classifications based upon illegitimacy in its decision regarding whether the statute of limitations to be applied in Pennsylvania to filing a claim for support of children born out of wedlock, which was much shorter than that for legitimate children violated the Equal Protection Clause of the Fourteenth Amendment. It considered the different levels of scrutiny to apply to different types of classifications, holding that in scrutinizing classifications based on illegitimacy the intermediate level of scrutiny is applied, which falls between the scrutiny of legislation based upon race or national origin and fundamental rights, which is

strict scrutiny and the minimal scrutiny which considers whether a statutory classification is rationally related to a legitimate governmental purpose. (citing cases).

It cannot seriously be argued that the state's interest in the promotion of legitimate family relationships is served by the disinheritance of a decedent's legitimated children. Decedent has openly and notoriously acknowledged them during his lifetime. Not only are they the victims of the father's conduct, they are twice punished for conduct in which they did not participate. Illegitimate children are citizens and taxpayers. For the State to sanction denying these children the right to inherit because of their status serves no useful purpose and tends only to promote irresponsibility of some fathers toward their biological children.

These Petitioners have complied with

every legal procedure over which they have control. Any statute which allows this disparity to continue is violative of the Equal Protection Clause of the United States Constitution.

In its decision, the North Carolina Court of Appeals refers to a "foreign court", also stating, "it does not seem reasonable to read N.C.G.S. §29-18 as permitting a foreign illegitimate child to inherit by use of a foreign order of affiliation obtained after intestate's death when an illegitimate North Carolinian could not obtain such relief in a North Carolina Court."

A like situation was considered in Matter of Watts, 106 Misc. 2d 35 (1980), wherein the right of inheritance of a domiciliary of Sweden, where illegitimate children are recognized as having all the rights of legitimate children with respect to the right to inherit from their

father, was being determined in New York State. The Court observed that "While there is no doubt that the law of the decedent's domicile at the time of death governs the intestate distribution of his estate, there is equally no doubt that the personal status of a child is dependent upon the law of the place where such child was born, citing (Miller v Miller, 91 N.Y. 315; Olmsted v Olmsted, 190 N.Y. 458, aff'd 216 U.S. 386, and other cases). Judge George W. Marthen, Surrogate, then observed "It may well be that an illegitimate of a foreign jurisdiction may become entitled to greater benefits than a New York illegitimate under the same circumstances. This is, however, so in other areas of conflict jurisprudence."

Overlooked in the consideration of the court below,, is the fact that a North Carolina resident can inherit from his

father, domiciled in New York State if legitimated after his death. The determination of whether a statute, as written or as applied, is violative of the Equal Protection Clause cannot be based upon whether the rights of domiciliaries are also violated. The proper remedy would be to violate the rights of neither.

Although, pursuant to the United State s Constitution, Article IV, §1, states are to give full faith and credit to judgments of a sister state, by its interpretation of N.C. G.S. 29-18, the Court below appears to hold that it will give full faith and credit to the judgment of a sister state as long as its statutes are in conformity with the laws of North Carolina.

The determination that this estate had vested in the two legitimate daughters in no manner requires a holding that the

Petitioners cannot inherit from their father. In spite of the vesting of the estate in the decedent's heirs, the amount of their inheritance is subject to the claims of creditors, attorney's fees, taxes and other costs of administration, so that the ultimate amount that an heir is to receive must await the final accounting of an estate which may be open for a period of years.

It is not another state that is attempting to divest the Respondents of their inheritance. The Law of North Carolina provides that a child, born illegitimate, who was legitimated by the laws of any other jurisdiction is entitled to inherit from his father....., without specifying a time limit that must be read into the law of the other jurisdiction. Full faith and credit requires that judicial proceedings of any court of any state shall have the same full faith and

credit in every state as it has in the state of enactment. Milwaukee County v. M. E. White Co., 296 U.S. 264 (1935).

CONCLUSION

For the reasons set forth herein, Petitioners respectfully request that this court issue its writ of certiorari to the North Carolina Court of Appeals to review the judgment of that court in Petitioners' case.

This 2nd day of June, 1992

S/William Sims

LAW OFFICES OF WILLIAM SIMS
WILLIAM SIMS
Counsel of Record
Office and P.O. Address
280 Humboldt Parkway
Buffalo, New York 14214
(716) 881-1322

BARBARA M. SIMS
Counsel for Petitioners
Office & P.O. Address
280 Humboldt Rarkway
Buffalo, New York 14214
(716) 881-1322

APPENDIX

No. 28P92 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

H. PARKS HELMS, Administrator of the Estate of Jessie Hogan Jackson, Deceased

v. From Mecklenburg County (9126SC31)

PHYLLIS YOUNG-WOODARD, MARCELLA BAKER, LINDA ALEXANDER and CAROLINE ALEXANDER

****

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendants (Linda and Caroline Alexander) in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Plaintiff; and upon consideration of the petition for

discretionary review of the decision of the North Carolina Court of Appeals, filed by Defendants (Linda and Caroline Alexander) pursuant to G.S. 7A-31, the following order was entered and is herby certifed to the North Carolina court of Appeals: the motion to dismiss the appeal is

> "Allowed by order of the Court in conference, this the 4th day of March 1992.
>
> s/ Lake, J.
> For the Court"

The petition for discretionary review is:

> "Denied by order of the Court in conference, this the 4th day of March 1992.
>
> s/Lake, J.
> For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of March 1992.

CHRISTIE SPEIR PRICE
ClerkofSupreme Court

_____
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Ms. Barbara M. Sims, Attorney at Law
For the Defendant(s)
Mr. Richard B. Gillespie, Jr., Attorney at Law
For the Defendant(s)
Messrs. H. Parks Helms and Christian R. Troy Attorney(s) at Law,
For the Plaintiff
Messrs. Barry S. Burke and Robert G. McIntosh Attorney(s) at Law for Young-Woodard and Baker
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Mead Data Corporation

NO. 9126SC31

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 1991

H. PARKS HELMS, administrator
of the Estate of Jessie Hogan
Jackson, Deceased,
Plaintiff.

v.

Mecklenburg County
No. 89-CVS-8753

PHYLLIS YOUNG WOODARD,
MARCELLA BAKER, LINDA
ALEXANDER AND CAROLINE
ALEXANDER,
Defendants.

Appeal by defendants Linda Alexander and Caroline Alexander from a judgment entered 3 August 1990 in Mecklenburg County Superior Court by Judge Shirley L. Fulton. Heard in the Court of Appeals 9 October 1991.

Helms, Cannon Hamel & Henderson, by H. Parks Helms and Christian R. Troy, for plaintiff-appellee H. Parks Helms.

Norwood, Burke, McIntosh & Edmonds, by Barry S. Burke and Robert G. McIntosh, for defendant-appellees Phyllis Young-Wood-

ard and Marcella Barker.

Faison, Fletcher, Barber & Gillespie, by Reginald B. Gillespie, Jr.; Barbara M. Sims, for defendant-appellants Linda Alexander and Caroline Alexander.

LEWIS. Judge.

The issue in this case is whether a foreign legitimation action must be initiated prior to the death of the alleged father for illegitimate children to inherit under North Carolina's intestate successions laws.

The facts are not contested. Plaintiff appellee, H. Parks Helms (administrator), is the duly qualified administrator of the estate of Jessie Hogan Jackson (decedent) who died intestate in Mecklenburg County, North Carolina on 8 August 1988. The administrator filed a declaratory judgment action seeking

to determine which of the four parties making claims against decedent's estate are the lawful heirs. Defendant-appellees, Phyllis Young-Woodard and Marcella Baker, are decedent's legitimate children. Defendant-appellants, Linda and Caroline Alexander, claim to be decedent's legitimated children. Both Alexanders, domiciliaries of New York obtained default orders of filiation from the New York Family Court on 24 February 1989, six months after Mr. Jackson's death. The Mecklenburg Superior Court reasoned that because North Carolina determines rights of inheritance at the date of death, only Young-Woodard and Baker were the lawful heirs. The trial Court held that the Alexanders were not permitted to inherit by intestate succession because they were not legitimated, nor were they in the process of being legitimated, prior to decedent's death. The Alexanders

appeal.

The Alexanders allege that is was error for the trial court to read into North Carolina's intestate succession laws a requirement that foreign legitimation proceedings must begin prior to the putative father's death. They allege that their exclusion from the class of heirs violated both the Full Faith and Credit (Article IV, § 1, and the Equal Protection (14th Amendment) Clauses of the United States Constitution. As their doe not pursue their allegation of error regarding the award of attorneys' fees to defendant-appellees we decline to address this matter. See N.C.R. App. 28 (a).

First we will consider the administrator's claim that this court lacks jurisdiction to hear this appeal. He alleges that the Alexanders' appeal was not timely filed because the notice

of appeal in the record does not have a stamp on the face of the document indicating the date that it was filed. Appeals must be filed within 30 days of the entry of judgment N.C.R. App. P. 3 (c). Timely appeal is noted by the file stamp on the face of the notice of appeal. All papers included in the record must show the date filed by this file stamp. N.C.R. App. R. 9 (b) (3). Failure to comply with the Rules of Appellate Procedure may result in dismissal of the appeal. N.C.R. App. P. 25 (b) and 34 (b) (1).

We recognize that "[f]ailure to give timely notice of appeal . . . is jurisdictional, and . . . must be dismissed." L. Harvey and Son Co. v. Shivar, 83 N.C. App. 673, 675, 351 S.E. 2d 335, 336 (1987) (citation omitted). This Court would be required to dismiss this appeal if the Alexanders failed to

meet the 30 day filing deadline. However, it is within this Court's discretion to dismiss or to apply another sanction for placing an unstamped copy of a timely filed notice of appeal in the record. N.C.R. App. P. 25 and 34 (b) (1). This Court has obtained a stamped file copy of the notice of appeal from the Office of the Clerk of Superior Court of Mecklenburg County which indicates that the appeal was timely filed. We take notice of this fact and hear this appeal. We caution future appellants to be more diligent in complying the Rules of Appellate Procedure.

Absent a statute to the contrary, illegitimate children have no right to inherit from their putative father. Hayes v. Dixon, 83 N.C. App. 52, 348 S.E. 2d 609 (1986), disc. rev. denied, 319 N.C. App. 224, 353 S.E.2d 402 (1987). cert. denied, 484 U.S. 824, 98 L.Ed. 2d 50,

108 S.Ct. 88 (1987). There are several ways to legitimate children in North Carolina: 1) verified petition filed with the superior court by the putative father, 2) subsequent marriage of the parents, or 3) civil action to establish paternity. N.C.G.S. §49-10 through 49-14 (1984). Illegitimate children may inherit from their putative fathers if they have been legitimated by one of the above or if paternity has been established in an action for criminal non-support. N.C.G.S. §29-19 (b), (1984). Likewise, foreign illegitimate children must be legitimated in order to inherit from their North Carolina fathers. N.C.G.S. §29-18, (1984).

The basis of the Alexanders' argument is that they have been legitimated by a foreign court and should, therefore, be permitted to inherit from their North Carolina father pursuant to N.C.G.S. §29-18 (1984). Neither the trial court, nor

this court disputes their legitimacy. The issue before the court is not whether North Carolina recognizes the Alexanders' foreign legitimation, but it is whether this state recognizes the Alexanders' foreign legitimation but is whether this state recognizes a foreign legitimation which occurred after the death of the intestate for purposes of intestate succession. The issue before this court is essentially one of timing. Read in pari materia, we conclude that North Carolina's intestate succession laws require that all legitimation actions, both foreign and domestic, be reduced to judgment prior to the death of the putative father.

North Carolina recognizes foreign legitimations. Under N.C.G.S §29-18:

> A child born an illegitimate who shall have been legitimated in accordance with the applicable law

of any other jurisdiction,

. . . . . .[is] entitled by succession to property by, through and from his father and mother and their heirs the same as if born in wedlock . N.C.G.S. §29-18 (1984).

On its face, the statute does not set a time requirement in which a foreign proceeding must be completed. However, read along with other intestate succession laws enacted with it, it is clear that the legislature set the intestate's date of death as an internal statute of limitations for the completion of an action to legitimate. See Jeffreys v. Tolin, 90 N.C. App. 233, 368 S.E.2d. 201 (1088). The internal statute of limitations is illustrated by the fact that the statutes will not permit an illegitimate North Carolinian to be legitimated after the putative father's death, much less to inherit. All the legitimation routes

authorized by the North Carolina statutes require the proceeding to be completed prior to the putative father's death. The verified petition and the marriage routes of legitimation obviously require a live putative father. The civil paternity suit means of legitimation specifically provides that "[n]o such action shall be commenced nor judgment entered after the death of the putative father." N.C.G.S. §49-14 (1984). Even the adjudication of criminal non-support, which does not legitimate, but provides an avenue for the illegitimate child to inherit, requires a live putative father at the time of the criminal proceeding. Hence an illegitimate North Carolina child who cannot be legitimated after the death of the alleged father, is summarily denied the right to inherit from the intestate. We reiterate the sentiments of another panel of this court. The [intestate

succession] statute[s] mandate what at times may create a harsh result. It is not, however, for the courts but rather for the legislature to effect any change." Hayes, at page 54, 348 S.E. 2d. at 610.

Accordingly, it does not seem reasonable to read N.C.G.S. § 29-18 as permitting a foreign child to inherit by use of a foreign order of affiliation obtained after the intestate's death when an illegitimate North Carolinian could not obtain such relief in a North Carolina court. Therefore, we hold that foreign legitimation actions must be completed prior to the intestate's death in order for the child to inherit under North Carolina law.

The Alexanders claim that North Carolina law permits all illegitimate children six months in which to prove their illegitimacy. We do not agree. See Hayes (where an illegitimate North

Carolinian who was not legitimated prior to the death of the intestate was denied the right to inherit from the putative father's estate). The Alexanders base their argument upon N.C.G.S. §29-19 (b) which provides:

Notwithstanding the above (legitimation) provisions, no person shall be entitl to take hereunder unless he has given written notice of the basis of his claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors. N.C.G.S. § 29-19(b) (1984). We agree that this statute sets out a statute of limitations. However, it is incorporated within this section in order to set a time limit for claims against a putative father's estate after legitimation. The beginning word "notwithstanding" indicates that "in spite of"

the claimant's ability to prevail on the legitimation issues listed above, any person who intends to file a claim must do so within the 6 month period. As it is possible that illegitimate children, like creditors may not be known to decedent's survivors, this time limit assures the finality of decrees and protects "those rightfully interested in [the] estates from fraudulent claims of heirship and harrassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Mitchell v. Freuler, 297 N.C. 206, 215, 254 S.E. 2d 762, 767 (1979) (quoting Lalli v Lalli, 439 U.S. 259, 58 L.Ed. 2d 503, 99 S.Ct. 518 (1978). This time limitation was not meant to extend the positive law enumerated above. Because the Alexanders did not begin their legitimation action until after the decedent's death, they are not entitled to inherit from his estate

and the trial court is affirmed.

The Alexanders allege that the trial court's determination that they could not inherit from decedent's estate violates the Equal Protection Clause. We disagree. In Olmsted v. Olmsted, 216 U.S. 386, 54 L. Ed. 530, 30 S.Ct. 292 (1910), the United States Supreme Court held that the Full Faith and Credit Clause did not require one state to give effect to another state's legitimatizations which disturb "interests already vested." Id. at 395, 54 L.Ed. 533. In general, North Carolina determines rights of inheritance at the date of death. Those children who are legitimate and whose who are legitimated prior to the intestate's death are lawful heirs with rights vested immediately thereupon. Mr. Jackson's only legitimate children were Ms. Young-Woodard and Ms. Baker. Ms. Young-Woodard and Ms. Baker's right to inherit were vested, under North

Carolina law, at the instant Mr. Jackson died. Therefore, no other state can divest Ms. Young-Woodard and Ms. Baker of their inheritance by a judicial or legistalvie act subsequent to this vesting. Id. at 394-395, 54 L.ED 533. Accordingly, we find no violation of the Full Faith and Credit Clause in the case at bar.

Affirmed.

Judges ARNOLD and COZORT concur.

A TRUE COPY

Clerk of the Court of Appeals

of North Carolina

by Doris P.Cole

Deputy Clerk

12-17 1991

89 CVS 8753

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Filed: August 3, 1990

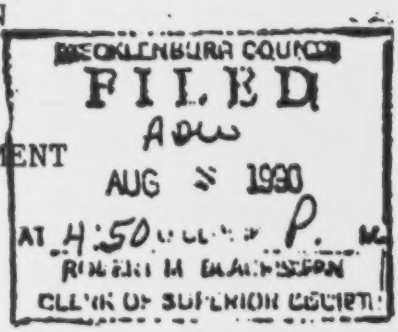
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

H. PARKS HELMS, ADMINISTRATOR, OF THE ESTATE OF JESSIE HOGAN JACKSON, Deceased,
Plaintiff,

JUDGMENT

v.



PHYLLIS YOUNG-WOODARD, MARCELLA BAKER, LINDA ALEXANDER and CAROLINE ALEXANDER,

Defendants.

THIS CAUSE coming on to be heard and being heard on March 13, 1990, before the undersigned Honorable Shirley L. Fulton, Superior Court Judge Presiding, with the parties present as follows: H. Parks Helms as administrator of the Estate of Jessie Hogan Jackson, Deceased, Phyllis Young-Woodard & Marcella Baker represented by their attorney, Barry S. Burke, and Linda

Alexander & Caroline Alexander represented by Barbara M. Sims of the New York State Bar, appearing pro hac vice by consent of all parties and the Court; the Court makes the following:

FINDINGS OF FACT

1. That H. Parks Helms is the duly qualified and acting Administrator of Jessie Hogan Jackson who died intestate and a resident of Mecklenbury County, North Carolina, on August 8, 1988.

2. That this action was brought pursuant to provisions of Chapter 1, Article 26 of the General Statutes of North Carolina entitled, "Declaration Judgments" and was brought by the Administrator of the Estate of Jessie Hogan Jackson for a determination of lawful heirs for distribution purposes on the 10th day of July, 1989.

3. That Defendants Phyllis Young-Woodard and Marcella Baker, through their attorney, Barry S. Burke, answered the

allegations of the Complaint.

4. That Defendants Linda Alexander and Caroline Alexander answered the allegations of the Complaint by and through their attorney, Barbara M. Sims.

5. That all parties were served with a civil Summons and a copy of the Complaint or are otherwise properly before this Court.

6. That as of the date of death of Jessie Hogan Jackson, his legitimate children were Phyllis Young-Woodard and Marcella Baker.

7. That there is no evidence before this Court that the decedent, Jessie Hogan Jackson, during his lifetime ever undertook to legitimate Linda or Caroline Alexander pursuant to N.C.G.S. 49-10 or N.C.G.S. 49-12.

8. That there is also no evidence before this Court that the decedent, Jessie Hogan Jackson, during his lifetime, ever

undertook to legitimate Linda or Caroline Alexander in accordance with the applicable law of any other jurisdiction.

9. That there is no evidence of any action being taken by any person prior to the death of the decedent to legitimate Linda or Caroline Alexander as the children of Jessie Hogan Jackson.

10. That there was no action pending before any court of competent jurisdiction at the time of Jessie Hogan Jackson's death which would have accomplished the legitimation of Linda or Caroline Alexander, had he Court been inclined to so rule as illustrated in In the Matter of the Judicial Settlement of the Final Judicial Account of Proceedings of Anne H. Christ, as Administratrix of the Estate of Charles Henry Christ, deceased, 116 Misc. 2d 1089 (1982).

11. That pursuant to N.C.G.S. 29-18, "A child born an illegitimate who shall

have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from his father and mother and their heirs the same as if born in lawful wedlock and if he dies intestate, his property shall descend and be distributed as if he had been born in lawful wedlock."

12. That pursuant to N.C.G.S. 29-18, there is no provision which mandates that legitimation of an illegitimate child domiciled in any other state occur prior to the death of the decedent; however, North Carolina case law dictates that heirs are determined at the death of the decedent.

13. That pursuant to the United States Constitution, Article IV, Full, Faith and Credit shall be given in each State to the ...Judicial Proceedings in every other State, and the Congress may by

general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof, and Defendants LINDA ALEXANDER AND CAROLINE ALEXANDER were determined to be the children of Jessie Hogan Jackson and legitimate according to the Laws of the State of New York prior to the distribution of the assets fo the Estate of JESSIE HOGAN JACKSON'S but subsequent to his death.

14. That upon the oral argument of the Action for Declaratory Judgment brought by the Administrator of the Estate of JESSIE HOGAN JACKSON, heard by this Court in March 13, 1990, Counsel for Defendants, LINDA ALEXANDER and CAROLINE ALEXANDER, raised the issue of the Constitutionality of the North Carolina Statute and/or its interpretation which would discriminate between the right of out-of-wedlock child is prohibited from establishing paternity after the death of the decedent, such

interpretation would be violative of United States Constitution, Amendment XIV.

15. The evidence before this Court which is not in dispute is that Linda Alexander and Caroline Alexander petitioned the Family Court of Erie County, New York, after the death of Jessie Hogan Jackson to be declared the legitimate children of the decendent.

16. That Linda and Caroline Alexander obtained an Order of Filiation dated February 24, 1989, from the above-mentioned Court of New York approximately six (6) months after the death of Jessie Hogan Jackson.

17. That said Order of Filiation adjudg ed and declared that Jessie Hogan Jackson was the father of Linda and Caroline Alexander.

18. That at the time of his death, the only legitimate children of Jessie Hogan Jackson were Phyllis Young-Woodard

and Marcella Baker.

Based on the foregoing FINDINGS OF FACT, the Court makes the following:

CONCLUSIONS OF LAW

1. That all parties in this action are properly before this Court, having been duly served pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and making appearances in this matter.

2. That the heirs of Jessie Hogan Jackson entitled to inherit property by and through the decedent are to be determined as of the date of death of the decedent.

3. That the heirs of the decedent in this case are those children who were the legitimate children of the decedent at the time of his death or, at the very least to be considered, had a legitimation action pending at the time of decedent's death and were entitled to a retroactive application.

4. That the legitimate heirs of Jessie Hogan Jackson at the time of his

death were Phyllis Young-Woodard and Marcella Baker.

5. That the Orders of Filiation presented from the Family Court of Erie County, New York, dated after the death of Jessie Hogan Jackson and which came about as a result of an action being filed after the death of Jessie Hogan Jackson are not sufficient for the legitimation of Linda Alexander and Caroline Alexander for purposes of intesate succession under the North Carolina General Statutes and are not entitled to retroactive application.

6. That the Orders of Filiation may be sufficient for purposes outside of the scope of this Court's ruling.

THEREFORE, based on the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is **Ordered, Adjudged and Decreed**, as follows:

1. That the heirs of Jessie Hogan Jackson, at the time of his death, are

Phyllis Young-Woodard and Marcella Baker.

2. That the Court declares Linda Alexander and Caroline Alexander not to be the legitimate children of Jessie Hogan Jackson at the time of his death and not entitled to take property by and through the decedent for the purpose of intestate succession.

3. That the Administrator is ORDERED to disburse the funds remaining in the Estate pursuant to the North Carolina General Statute and in accordance with this Order.

4. That the cost of this action be taxed against the Plaintiff, including reasonable attorney's fees for Barry S. Burke to be determined by the Clerk of Superior Court.

This the 3 day of August, 1990.

Shirley L. Fulton
Resident Superior Court Judge

United States Constitution

Amendment XIV.--§1

§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution

Article IV.--§1

§1. Full faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such

Acts, Records and Proceedings shall be proved, and the Effect thereof.

New York Estates, Powers and Trusts Law

§4 - 1.2 reads in part

(a) For the purposes of this article:

(2) A child born out ot wedlock is the legitimate child of his father so that he and his issue inherit from his father and his paternal kindred if:

(A) a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity or; * * *

(C) paternity has been established by clear and convincing evidence and the father of the child has openly and notoriously acknowledged the child as his own.

North Carolina General Statutes.

§29-9

Lineal descendants and other relatives of an intestate born within ten lunar

months after the death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

North Carolina General Statutes.

§29-18

A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from his father and mother and their heirs the same as if born in lawful wedlock; and if he dies intestate, his property shall descend and he distributed as if he had been born in lawful wedlock.

North Carolina General Statutes.

§29-19 (b) Succession by, through and from illegitimate children.

(2) * * *

Notwithstanding the above provisions,

no person shall be entitled to take hereunder unless he has given written notice of the basis of his claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

§49-10. Legitimation.

The putative father of any child born out of wedlock, whether such father resides in North Carolina or not, may apply by a verified written petition, filed in a special proceeding in the superior court of the county in which the putative father resides or in the superior court of the county in which the child resides, praying that such child be declared legitimate. The mother, if living, and the child shall be necessary parties to the proceeding, and the full names of the father, mother and the child shall be set out in the petition.

A certified copy of a certificate of birth of the child shall be attached to the petition. If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and the pronounce the child legitimated; and the child shall be set out in the court order decreeing legitimation of the child. The clerk of the court shall record the order in the record of orders and decrees and it shall be cross-indexed under the name of the father as plaintiff or petitioner on the plaintiff's side of the cross-index, and under the name of the mother, and the child as defendants or respondents on the defendants side of the cross-index. (Code, s. 39; Rev., s. 263; C.S., s. 277; 1947, c. 663, s. 1; 1971, c. 154; 1977, c. 83, s. 1.)

§49-12. Legitimation by subsequent marriage.

When the mother of any child born out of wedlock and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall, in all respects after such intermarriage be deemed and held to be legitimate and the child shall be entitled, by succession, inheritance or distribution, to real and personal property by, through, and from his father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock. (1917, c.219, s. 1;C.S., s. 279; 1947, c. 663, s. 2; 1955, c. 540, s. 3; 1959, c. 879, s. 11.)